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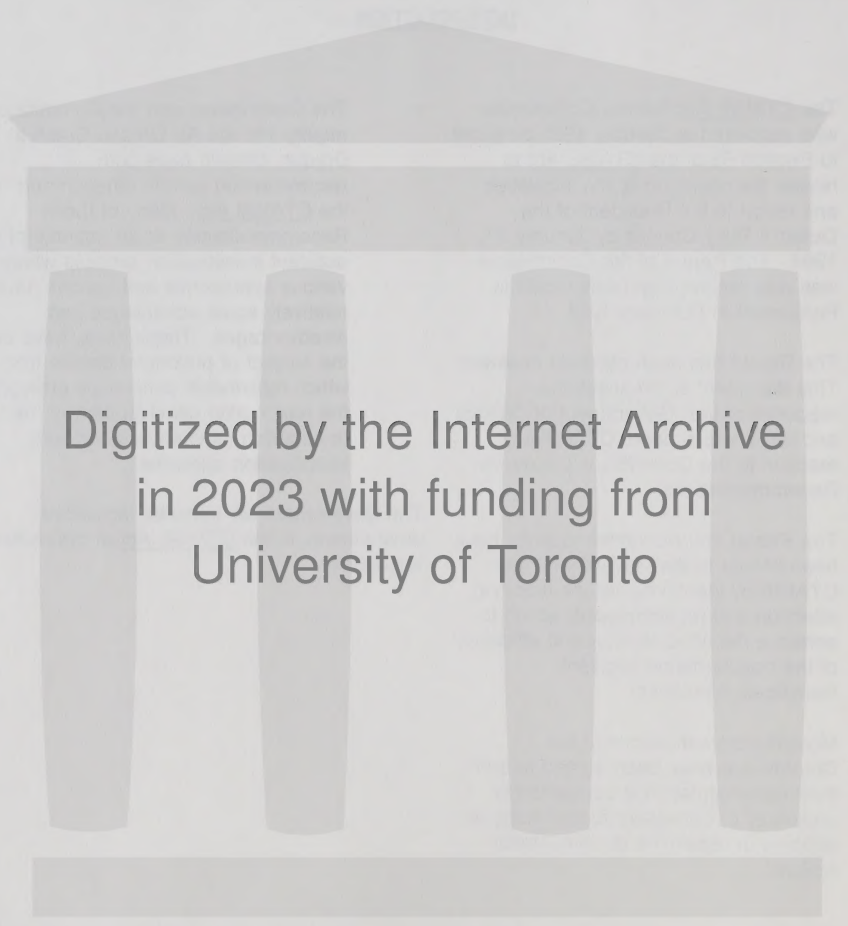
GOVERNMENT OF CANADA RESPONSE
TO
REPORT OF THE
CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION AND
SAFETY BOARD (CTAISB) ACT
REVIEW COMMISSION

JUNE 1995

Canada

INTRODUCTION

- The CTAISB Act Review Commission was appointed in January 1993 pursuant to Section 63 of the CTAISB Act to review the operation of the legislation and report to the President of the Queen's Privy Council by January 31, 1994. The Report of the Commission was duly received and was tabled in Parliament in February 1994.
 - The Report has been carefully reviewed. This document summarizes the response of the Government of Canada and takes into account CTAISB's reaction to the Commission's sixty-six Recommendations.
 - The Report and Recommendations have been helpful to the Government and CTAISB by identifying issues requiring attention and recommending action to enhance the effectiveness and efficiency of the transportation accident investigation process.
 - Most Recommendations of the Commission have been agreed to and their implementation is completed or underway or necessary further study is ongoing to determine implementation options.
 - The Commission and the Commission of Inquiry into the Air Ontario Crash at Dryden, Ontario have both recommended certain amendments to the CTAISB Act. Many of these Recommendations cover aspects of the accident investigation process where various approaches and options have relatively equal advantages and disadvantages. These areas have been the subject of prolonged debate from which reasonable consensus emerged in the past during consideration of the Bills to establish independent accident investigation agencies.
- The Government will consider legislative amendments to the CTAISB Act at the earliest opportunity.



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GOVERNMENT OF CANADA RESPONSE TO REPORT OF THE
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SAFETY BOARD (CTAISB) ACT REVIEW COMMISSION

Recommendation 1

The Chairperson should conduct a review of the TSBC internal structure and administrative processes. This review should analyze the ability of the TSBC human and administrative resources to meet the following fundamental administrative goals:

- a) the number of management layers between the CEO and the Directors of Investigations be reduced, in order to increase internal accountability and simplify processes;
- b) the safety analysis function be restructured to meet the distinct responsibilities of:
 - i) providing integrated support to the investigative process; and
 - ii) monitoring accident trends and performing non-occurrence related studies;
- c) employees be hired based on forecast modal demand for their skills rather than on historical patterns;
- d) human resource processes achieve cohesiveness by providing for similar advancement opportunities for all staff; and
- e) job classifications and pay scales be harmonized for accident investigation positions in all modes.

The Chairperson should take all measure to ensure that any existing TSBC structure or process found incompatible with such goals be replaced or restructured within two years.

Response:

Agree in principle. The Canadian Transportation Accident Investigation and Safety Board (CTAISB) examined its internal structure and administrative processes with the assistance of an independent consultant with a view to improving the agency's effectiveness and efficiency and making the best use of resources allocated to CTAISB.

- a) Agree with goal of increasing internal accountability and simplifying processes. All levels of management and supervision are being reviewed.
- b) Agree. The safety analysis function is now structured to enable it to meet the responsibilities described in this Recommendation.
- c) Agree. Current practice is to hire employees based on modal demand for their skills.
- d) Agree. Being implemented to extent practicable.
- e) Agree. The benefits of harmonization are recognized. Will be implemented at CTAISB to extent possible given constraints of statutory Public Service requirements.

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GOVERNMENT OF CANADA RESPONSE TO REPORT OF THE
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Recommendation 2

- a) The TSBC should adopt risk management as a fundamental organizational principle.
- b) In developing its strategic plan, the TSBC Board should use the risk management principles which take into account the anticipated benefit in reducing general public risk exposure.
- c) The TSBC strategic plan should take into account the general public's relative exposure to transportation risks among modes and not historical budgetary allocations.
- d) The TSBC Chairperson should direct senior staff to acquire expertise in, and use, risk management techniques in revising the Agency structure and in allocating resources.

Response:

Agree.

- a) Adopted. Risk management principles are now being used for many purposes at CTAISB; risk management principles are proving especially useful in setting priorities and allocating resources.
- b) Agree. Being done.
- c) Agree. CTAISB's strategic plan will take into account the general public's relative exposure to transportation risks among modes.
- d) Agree. CTAISB senior and middle management staff are acquiring further expertise through university and public service management courses and CTAISB is ensuring, through risk management workshops and by other means, that all appropriate staff obtain training in this area. Risk management techniques are being used in allocating resources and will be used in decision making on the agency structure.

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Recommendation 3

The Board should consult with the transportation community and then develop a revised policy respecting the classes of transportation occurrences to be investigated and the levels of response. Essential elements should include the following:

- a) clearer and more precise criteria be employed for selection of incidents and level of effort to be applied;
- b) the priority setting role of the OCSRS be communicated to staff and made visible to the transportation community; and
- c) a biennial review of the relevance and effectiveness of the OCSRS be conducted with the transportation community, and appropriate changes made.

Response:

Agree. In response to this Recommendation, CTAISB restructured its occurrence classification policy. Consultations have started on the new policy.

- a) Agree. Such criteria are integral to the new classification policy.
- b) Agree. Implemented at CTAISB as regards staff; action in regard to transportation community has started.
- c) Agree. The Occurrence Classification policy will be reviewed on an ongoing basis at the CTAISB in consultation with the transportation community in order to ensure its relevance and effectiveness.

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GOVERNMENT OF CANADA RESPONSE TO REPORT OF THE
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Recommendation 4

The President of the Privy Council should introduce an amendment to the *CTAISB Act*:

- a) permitting the Board to direct that the classification of an occurrence be upgraded or that greater resources be allocated to an investigation;
- b) permitting the Board to end an occurrence investigation or reduce the resources assigned to it, whenever the Board is satisfied that continuing the investigation at the initial level of response would not provide sufficient results in terms of safety enhancement; and
- c) requiring the Board to issue a factual statement summarizing the occurrence and the Board's reasons for ending or downgrading the investigation.

Response:

It is agreed that CTAISB should have the flexibility proposed with respect to the handling of occurrences. All elements of this proposal will be considered in the review of the Act.

- a) Agree with intent. In the interim, the current legislation already gives the Board general discretion to carry out the action suggested.
- b) Agree with intent. In the interim, such action is within the general discretion of the Board with the current legislation.
- c) Agree with intent. In the interim, the present legislation permits the Board to issue such a statement but does not impose an obligation to do so.

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Recommendation 5

The Chairperson and Board should develop comprehensive policies and standards for the conduct of investigations. These should include investigating and analyzing the effects of government department and agency regulatory and operating programs, operator management practices and corporate culture, and human factors and should foster co-ordinated use of Agency and external specialists. The Chairperson should direct that TSBC field staff receive increased training in investigative techniques to acquire information relating to these factors.

Response:

Agree. Being implemented. Policies and standards have been adopted which recognize the importance of investigating and analyzing the areas cited in the Recommendation. CTAISB's Manual of Investigation Operations reflects these policies and standards and staff receive training; outside experts are being used as needed. The policies and standards will be updated on an ongoing basis.

Recommendation 6

The Chairperson and Board should restructure the TSBC's investigation and report production processes with the goal that quality assurance will be achieved through programs based on the principle of avoiding the need to rework investigations and reports.

Response:

Agree. Being implemented. CTAISB has made extensive efforts to produce high quality and timely Reports following investigation of occurrences. Some changes in the Report production process have already been implemented and quality and timeliness of Reports are improving. Additional changes in processes will be made. (See also response to Recommendation 7).

* * *

Recommendation 7

The Chairperson and Board should restructure the report development process. Elements of restructuring should include that:

- a) one individual, preferably an investigator, be assigned responsibility for driving the production of each draft report from the time of the occurrence to the presentation to the Board;
- b) the Board Initial Review Committee process be abolished;
- c) draft reports be developed through simultaneous involvement of field investigators, safety analysts and specialized laboratory and other services;
- d) for those draft reports where the Board has questions related to either draft findings or report standards, the IIC and, where appropriate, other staff contributors, present the draft report to the Board; and
- e) the entire investigation file and physical evidence be considered by the Board in its review.

Response:

Agree that the Report development process should be restructured. The process is being fundamentally reviewed at CTAISB.

- a) Agree with intent of establishing a clearer centre of responsibility. This goal will be achieved but likely not with one individual, given the range of inputs required for CTAISB Reports.
- b) Implemented. Initial Review Committee abolished in May 1994.
- c) Implemented. This is now being done.
- d) Implemented. This is now being done.
- e) Implemented. This is now being done.

Further improvements to the Report development process will continue to be identified and implemented.

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Recommendation 8

The Chairperson should act promptly to increase the safety analysis resources available to modes other than air. Mode-specific human and technical analysis resources should be matched with anticipated demand for such services, based on risk and trend analysis.

Response:

Agree. Implemented. Safety analysis resources have been increased for modes other than air, and their level will be monitored to ensure they remain at an appropriate level. This shift has been reflected in the Occurrence Classification policy.

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Recommendation 9

The Board should develop a policy concerning ministerial reaction to its recommendations. This policy should include publicizing the initial ministerial response, monitoring whether actions were taken, reviewing any actions taken and publicizing the results of such monitoring and analysis.

Response:

Agree with intent that there should be a follow-up tracking system. Increased use of the CTAISB Annual Report to Parliament is being employed and increased use of CTAISB's Reflexions magazine is being considered. Responsibility to react to CTAISB Recommendations rests with the responsible Minister. Procedures exist concerning Ministerial reactions to CTAISB Recommendations.

* * *

Recommendation 10

Except where it is technically appropriate to recommend specific corrective action, the Board should issue recommendations stressing the objectives to be achieved from safety actions rather than the means by which such results are to be obtained.

Response:

Agree. The Board's aim is to develop its recommendations in line with the approach suggested.

* * *

Recommendation 11

Recognizing that the correction of safety deficiencies does not always require regulatory action, the Board should be prepared to make recommendations addressed to any other person directly interested in an occurrence, rather than solely a minister of a federal department.

Response:

Agree. This Recommendation has been implemented by the Board.

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Recommendation 12

The Board should develop a policy derived from TSB Decision 39 that:

- a) safety advisories, safety information letters and hazard notifications should serve only the purpose of immediately warning of potential safety deficiencies;
- b) specifically delegated TSBC staff can release immediate warnings of potential safety deficiencies through these methods without reference to any proposed corrective action;
- c) whenever proposed corrective actions are to be released outside the Agency, they shall only be in the form of recommendations or safety studies developed by the Board; and
- d) a uniform practice be adopted for the issuance of safety advisories, safety information letters and hazard notifications that all will be released to the public with appropriate safeguards to protect the anonymity of the Confidential Aviation Safety Reporting Program (CASRP).

Response:

Agree in part. The scope for use of safety advisories and safety information letters is even wider than suggested by the Recommendation. In addition to serving the purpose of immediate warning of potential safety deficiencies, these instruments are useful to draw attention to routine safety related problems which come to the attention of CTAISB and which are not appropriate candidates for attention at the level of the Board and Ministers. Procedures for the production and distribution of these documents are now in place at CTAISB and operating satisfactorily, but will continue to be updated and improved on an ongoing basis.

* * *

Recommendation 13

In addition to the existing authority to issue safety advisories, the Board should approve specific instruments of delegations for issuing safety information letters and hazard notifications.

Response:

Agree. The Board has delegated to staff the authority to issue these documents, and controls are in place to ensure those issued are in line with Board policy; on a monthly basis, Board members review all issued safety advisories and any comments received on those advisories.

* * *

Recommendation 14

The Board should discuss topics for safety studies and special investigations with senior staff at least annually.

Response

Agree. Implemented. The Board has increased the amount of attention given to this matter. A comprehensive annual discussion is held, and there are regular updates as to activity underway.

* * *

Recommendation 15

The Board should develop a policy that:

- a) the Board consult widely with the transportation community in deciding safety study and special investigations topics; and
- b) the Board monitor and drive the timely production and release of such studies and investigations.

Response:

Agree. Will be implemented. Consultation with industry (including the transportation safety regulators) on topics for safety studies and special investigations now takes place to some extent; further efforts (including development of a formalized consultative mechanism) are being made to increase consultation and this topic will be included in plans for regular meetings with industry.

* * *

Recommendation 16

TSBC data collection and retrieval systems should be set up and operated:

- a) to be able to acquire and generate data organized compatibly with internationally accepted standards for reporting thresholds and category description;
- b) to be user friendly to field investigators and outside Canadian and international users; and
- c) to permit statistically valid cross-modal analysis.

Response:

Agree. CTAISB is working to implement this Recommendation in consultation with domestic and international users such as the International Civil Aviation Organization (ICAO), associations such as the International Transportation Safety Association (ITSA) and groups such as the International Data Exchange, Aviation Safety (IDEAS) Committee.

* * *

Recommendation 17

The TSBC should make better use of its data base systems and analyses as management and operational tools, such as taking steps to use data base information to:

- a) monitor the effect of past investigations and studies on transportation safety by recording statistical changes in the incidence of accidents;
- b) plan allocation of resources;
- c) update the OCRS;
- d) assist investigators in categorizing occurrences in the OCRS;
- e) assist investigators in field works; and
- f) assist selection and preparation of safety studies.

Response:

Agree. CTAISB is striving to make maximum use of its data base in all these areas.

* * *

Recommendation 18

The Board should take advantage of Agency data bases by making increased use of trend analysis in occurrence reports.

Response:

Agree. The data bases are being used in the development of CTAISB Reports. The Board will make extensive use of trend and other numerical analyses as more data collection is refined.

* * *

Recommendation 19

The Board should introduce voluntary reporting programs into the other modes only when the difficulties associated with the CASRP have been resolved and the choice of who should operate such systems resolved.

Response:

Agree. Voluntary reporting programs are being introduced into other modes as the conditions outlined in the Recommendation have been met.

* * *

Recommendation 20

The Board should develop a policy that the TSBC will employ a range of public inquiry formats for various uses such as:

- a) a full public inquiry for purpose of satisfying public concern immediately after a high-profile accident;
- b) a wide-ranging special investigation into a transportation industry or system;
- c) a fact-finding inquiry as an adjunct to a field investigation;
- d) a technical inquiry focused on a specific factual or scientific issue; or
- e) an open inquiry focused on the content of recommendations to be made after a field investigation is completed.

Response:

Agree with intent. The Board has reconsidered its approach to the use of public inquiries and has adopted what it believes is a useful approach which will enable it to use public inquiries in the situations described in this Recommendation.

The CTAISB Public Inquiries Manual outlines the Board's approach to public inquiries and addresses most requirements envisaged in the Commission Recommendations.

* * *

Recommendation 21

The Board should amend the *CTAISB Act* Regulations to allow for the proposed full range of inquiry formats.

These amendments should include removal of the present procedural restrictions that necessarily make an inquiry only a fact-finding adjunct to a field investigation. The amendments must, depending on which inquiry format is being used, allow the Inquiry Officer(s):

- a) to permit parties who have been granted the right to participate;
 - i) to advance evidence in respect of findings and safety deficiencies;
 - ii) to advance evidence concerning safety actions taken and proposed;
 - iii) to make submissions on findings and safety actions;
 - iv) to make submissions on one another's submissions; and
 - v) to make submissions on the content of the inquiry and the Board report; and
- b) to include with the inquiry report, draft recommendations for the Board's consideration.

Response:

Agree in part with intent. The range of inquiry formats identified can generally be accommodated with the present regulations. The relationship between the inquiry and the CTAISB investigation and Report process as set out in the CTAISB regulations, is considered appropriate given the approach of the current legislation. Amendments to the regulations to permit more specifically the range of inquiry formats suggested by the Commission can be studied further. Any amendments to the Regulations will follow the review of the Act.

* * *

Recommendation 22

To permit the recommended range of inquiry formats to be used to its full potential, the President of the Privy Council should introduce amendments to section 10, 21 and 24 of the *CTAISB Act* that:

- a) the DOIs follow the directions of the Inquiry Officer(s) in conducting a field investigation in conformity with the requirements of the particular inquiry;
- b) the Inquiry Officer(s) have discretion to grant standing at inquiries to persons other than observers or IPs; and
- c) where, at a particular inquiry examining the whole of an occurrence, the Inquiry Officer(s) have directed that parties with standing have an opportunity to make submissions as to findings or to comment on the draft inquiry report, the Board need not provide a copy of its draft report arising from the inquiry to IPs for comment.

Response:

Agree in part with intent. This Recommendation will be given further study with a view to possible future amendment of the Act. From an administrative standpoint and in accordance with criteria pre-established by the Board, nothing presently prevents the Inquiry Officer(s) from giving directions to the Directors of Investigations (DOIs) or from granting standing at inquiries to persons other than observers or persons with a direct interest (IPs). Similarly from an administrative standpoint, nothing presently prevents the Inquiry Officer(s) from allowing submissions to be made prior to the issuance of a Report. The proposed legislative change with respect to the issuance of draft Reports will require further consideration of its implications.

* * *

Recommendation 23

As well as increasing the TSBC's internal efficiency, the Chairperson and Board must increase the Agency's effectiveness in order to fulfil its statutory mandate. The Chairperson and Board should:

- a) identify the actual users of the TSBC's services;
- b) monitor continually the safety needs of those users;
- c) communicate directly with those users what the TSBC's services are and how the TSBC performs them; and
- d) act in response to such communication to improve the TSBC's effectiveness.

Response:

Agree. CTAISB is taking action to implement this Recommendation. A more formal schedule of meetings with the industry, including transportation safety regulators, and with the public has been developed. Other action is underway, for example, a study was initiated to identify ways of rationalizing the effectiveness of CTAISB regional offices. As part of this study, a wide range of users of CTAISB services were consulted.

* * *

Recommendation 24

The Chairperson and Board should develop a strategic plan in addition to the operational plan. Elements of the strategic plan should include long-term goals and objectives for:

- a) adapting to emerging transportation technologies and operational environments;
- b) adapting the OCSRS and data bases to these changing conditions;
- c) ensuring that TSBC staffing and training procedures are developed to meet these changing conditions;
- d) ensuring that investigation and analytic facilities do not lag behind these changing conditions; and
- e) ensuring that budgetary resources are justifiably sufficient for these purposes.

This strategic plan should be reviewed and updated annually in conjunction with the TSBC's operational planning exercise.

Response:

Agree. CTAISB recognizes the value of these goals and objectives and is already taking measures to achieve them. These goals and objectives will be reflected in the strategic and operational plans being developed at the agency.

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SAFETY BOARD (CTAISB) ACT REVIEW COMMISSION

Recommendation 25

The President of the Privy Council should introduce an amendment to section 13 of the *CTAISB Act* to direct that any parliamentary committee established to review matters relating to transportation conduct an annual review of the TSBC's strategic plan.

Response:

Agree with intent. Like those of many other departments and agencies, CTAISB's Annual report is already permanently referred to Parliamentary Committees, and CTAISB's Part III of the Estimates which outlines objectives and goals for the upcoming year, is regularly referred to these Parliamentary Committees. In future, Departmental Outlook documents (which outline expenditure plans and priorities), prepared by CTAISB and other departments and agencies, will also be referred to Parliamentary Committees. The Committees may choose to ask CTAISB to provide a copy of its strategic plan, but an amendment to the Act along the lines proposed is not seen as necessary.

* * *

Recommendation 26

The Board should direct the staff to prepare, update and maintain an indexed and consolidated set of all existing and future by-laws, policies respecting the OCRS and policies respecting the conduct of investigations to ensure that they are readily accessible to the public under section 8 of the *CTAISB Act*.

Response:

Agree. Being implemented. The CTAISB Occurrence Classification policy and the Manual of Investigation Operations, which reflect policies and contain procedures followed in the conduct of investigations, are updated as required and available to the public. The Board has decided, for the time being, to make regulations rather than by-laws to deal with matters which could also be dealt with in by-laws. The CTAISB Regulations, which contain some policies with respect to the conduct of investigations, are also available to the public. Further efforts are being made to provide those interested with information on these policies and procedures; for example, publication entitled Investigation Process has recently been issued to outline policies and procedures adopted at CTAISB.

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Recommendation 27

The Chairperson and Board should revise and expand the TSBC's general communications strategy with the goal of increasing the Agency's profile with the general public and the transportation community. This strategy should include:

- a) development of an annual communications plan;
- b) periodic external evaluation to measure the effectiveness of the plan on the TSBC's actual public profile;
- c) active communication by Board members and senior staff with the public and transportation community; and
- d) public commentary by Board members on the content of their reports and studies.

Response:

Agree with intent. Being implemented. A new updated comprehensive communications strategy for CTAISB is close to completion.

* * *

Recommendation 28

The Chairperson, the Board itself and senior staff should increase dialogue between the TSBC and the transportation community, particularly with operating staff in line government departments and carriers, and with individual boat and aircraft owners.

Response:

Agree. Being implemented. CTAISB fully recognizes the importance of dialogue with the transportation community, including staff in line departments and carriers, and owners.

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Recommendation 29

The President of the Privy Council introduce an amendment to the section 23 of the *CTAISB Act* to clarify that the right of attendance at investigations by the representative of the Minister of Transport or other ministers, shall only be for purposes of:

- a) determining causes and contributing factors to safety deficiencies; and
- b) enabling the Department to take prompt remedial measures with respect to the operation of a transport conveyance, transport facility or transport undertaking, or with respect to national security of a regulatory process, and not for the purpose of gathering information for regulatory enforcement.

Response:

Agree in part. The need for a clear understanding by all of the role of Minister's observer is recognized. The comments and Recommendations of the Commission will be helpful as the Government reviews section 23 of the legislation with a view to providing any necessary clarification of roles and responsibilities. At present section 23 provides guidance to the effect that the Minister of Transport's observer is there in order to obtain timely information relevant to the responsibilities of that Minister; and that other observers can be designated by Ministers responsible for departments having a direct interest in the subject matter of the investigation.

* * *

Recommendation 30

The Chairperson and Board should take immediate steps to complete Memoranda of Understanding with all relevant federal departments and agencies, including:

- Transport Canada
- Labour Canada (Human Resources Development)
- National Energy Board
- RCMP
- Canada-Newfoundland and Canada-Nova Scotia Offshore Petroleum Boards
- Health Canada

If the TSBC and any such federal department or agency are unable to reach agreement by December 31, 1994, the President of the Privy Council and other responsible ministers should refer the matter to cabinet or arbitration between the departments and the Agency, to achieve resolution.

Response:

Agree with intent. Memoranda of Understanding (MOU)s with the following have been signed:

- St Lawrence Seaway Authority
- Transport Canada
- Department of Human Resources Development (re. Labour)
- National Energy Board
- Royal Canadian Mounted Police (RCMP)

Others are in various stages of development; in all cases CTAISB is able to work effectively and cooperatively with other departments and agencies. Where it seems as if there will be a protracted period without an MOU, CTAISB will consider proposing signature of an agreement in principle for interim documentation of the working arrangements already in place. There is no substantive problem with other departments or agencies which needs to be resolved.

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Recommendation 31

The Chairperson and Board should take immediate steps to complete Memoranda of Understanding with all provincial authorities responsible for coroners and emergency response. If the TSBC and any provincial authorities are unable to reach agreement by December 31, 1994, then the Government of Canada and the governments of any of the provinces concerned should intervene at the ministerial or cabinet level to achieve resolution.

Response:

Agree with intent. A model Memorandum of Understanding (MOU) was approved by a sub-committee of the National Association of Chief Coroners and Chief Medical Examiners. MOUs to facilitate interaction amongst CTAISB and police and coroners in the provinces and territories have been signed with:

- New Brunswick
- Alberta
- Yukon
- Saskatchewan

CTAISB is working well with officials of all provinces and territories to coordinate activities of CTAISB with those of police and coroners and those responsible for emergency response, and no significant problems appear to exist which would prevent signing of MOUs.

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Recommendation 32

The Chairperson and Board should be receptive to negotiating agreements with provinces for the contracting of TSBC services to investigate accidents on provincial transportation facilities within TSBC areas of expertise, such as short-line railways and provincial pipelines. The President of the Privy Council and provincial governments should facilitate such agreements.

Response:

Agree. CTAISB is receptive to negotiating any such agreements with the provinces. CTAISB staff have met with some provincial officials. With the increasing use of short-line railways there is interest in developing arrangements to cope with the investigation of accidents involving these short-line railways. Any facilitation required from the President of the Queen's Privy council will be provided.

* * *

Recommendation 33

The Chairperson and Board should develop a more comprehensive contingency plan for response to a major occurrence by no later than September 30, 1994. Essential elements of the plan should include:

- a) criteria for the immediate calling of a public inquiry if warranted;
- b) a duty roster of Board members available at all times to respond to governmental and media questions about the TSBC's response to the occurrence, preferably on site;
- c) provision to facilitate continuation of an investigation or a public inquiry, in the event legal challenges are launched; and
- d) up-to-date response plans, procedures and policies to ensure that no investigation need, or available capability, skill or facility, is overlooked. This could include information on transportation safety and investigation experts and others (including judges) who could assist in a public inquiry or other major occurrence investigation.

Response:

Agree. Being implemented. A comprehensive contingency plan has been developed at CTAISB following the Commission's Recommendations and the experience CTAISB gained during a major occurrence simulation exercise conducted at the end of 1993 and early in 1994.

- a) Agree. Implemented. Criteria adopted at CTAISB include: the accident prevention potential of an inquiry, such as the greater capacity of an inquiry to produce fuller information or the ability of an inquiry to encourage quicker remedial action; loss of life or serious injuries involved; frequency of similar occurrences; type of occurrence and the extent to which public safety issues are involved; degree of public interest and concern about transportation safety.
- b) Agree. Implemented.
- c) Agree. Implemented.
- d) Agree. Implemented. Arrangements are now in place at CTAISB and are updated continuously.

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Recommendation 34

The Chairperson and Board should develop and exercise occurrence contingency response plans indigenous to the marine, rail and pipeline modes by no later than September 30, 1994.

Response

Agree. Implemented. A major exercise was carried out at CTAISB at the end of 1993 and early 1994. It included all modes. Future exercises will be scheduled as required.

* * *

Recommendation 35

The Chairperson and Board should ensure that major occurrence response plans for each mode are tested in a biennial simulation (with participation by the Board and staff from the TSBC, other agencies and industry) and externally evaluated to improve each plan's effectiveness. Independent advice from the overall effectiveness review will be obtained with respect to the most effective procedure to be adopted for ongoing review and evaluation of the response plans.

Response:

Agree. Implementation ongoing at CTAISB.

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Recommendation 36

The Board, in developing all of its policies, should take into consideration the particular needs of all those who rely on the Agency's work, including:

- non-travelling public exposed to risk from transportation occurrences;
- fare-paying passengers;
- other transportation users; and
- carriers, particularly those without specialized safety resources.

Response:

Agree. Being implemented at CTAISB. A major part of CTAISB's communication activities in future will involve further discussions with those mentioned in this Recommendation to ensure their needs and concerns are identified and addressed.

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Recommendation 37

The Board should make all of its policies, determined under section 8 of the *CTAISB Act*, readily accessible to the public without charge in a clear and easily understandable format. Where appropriate, policies applying to only one mode or type of TSBC procedure, such as field investigations or public inquiries, should be made available under separate cover.

Response:

Agree. Being implemented at CTAISB. Efforts are being made to improve both the presentation of these policies and their availability. For example, the Board has approved distribution of a new CTAISB publication entitled Investigation Process which outlines policies and procedures CTAISB has adopted and instituted with respect to the conduct of investigations.

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Recommendation 38

The TSBC should make more effective use of private industry expertise, in order to:

- a) supplement the TSBC's resources in the event of major or unusual occurrences;
- b) ensure, when investigating occurrences, that the TSBC obtains complete understanding of the current managing environment and development of new technologies; and
- c) ensure that recommendations are technically feasible and will effectively address safety deficiencies identified.

Response:

Agree with intent. CTAISB recognizes the important benefits the use of private industry expertise can bring. There will be continued and more effective use of private industry expertise at the agency.

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Recommendation 39

Board members should develop and apply a consistent policy across all modes in choosing to investigate commercial versus private recreational transportation occurrences.

Response:

Agree. Being implemented at CTAISB. CTAISB has studied this matter and has developed and implemented a consistent policy with respect to the selection of commercial versus private recreational transportation occurrences for investigation. This matter is an important area of focus in the new Occurrence Classification policy.

* * *

Recommendation 40

While acknowledging the principles of modal integration, the TSBC must remain sensitive to the different perceptions, cultures and operating environments of the different modes. To this end:

- a) harmonization of investigatory processes and methods should not be based on the historical practices of one mode at the expense of preserving and developing methods necessary to do the best investigation in other modes;
- b) such harmonization should be implemented only where there will be a demonstrable benefit to the quality of investigations as distinct from the mere efficiency of the investigation process;
- c) the content and format of reports and other communications should take into account the differing needs of the public and those sectors of the transportation community which will rely on the reports; and
- d) the usefulness of TSBC publications should be measured by periodic public surveys and readability analysis.

Response:

Agree. Being implemented. CTAISB fully recognizes that there must be sensitivity to the different perceptions, cultures and operating environments of the different modes. Where there is a need for different applications, the differences between modes can and will be taken into account at the agency.

At the same time, CTAISB's philosophy, in line with the philosophy underlying the Act, is to use the same approach to occurrences in all modes, unless there are significant differences amongst modes and it is necessary to adopt a different method in implementing the basic principles, policies and procedures set out in the Act. For example, CTAISB surveys indicate that there is generally a positive industry reaction to certain CTAISB publications, particularly the magazine known as Reflexions which is published in distinct issues by mode, i.e. Marine Safety Reflexions, Aviation Safety Reflexions etc.

* * *

Recommendation 41

The President of the Privy Council should introduce amendments to the *National Energy Board Act* and the *CTAISB Act* to clarify that the NEB only has jurisdiction to investigate occurrences arising from the construction or rebuilding of pipelines before they go into service and that the TSBC has exclusive jurisdiction to investigate operational occurrences for the *CTAISB Act* purposes only.

Response:

Agree with intent. The need for clarity with respect to the jurisdictions of the agency and other departments and agencies is recognized. The current legislation is however, clear as to the respective jurisdictions of the National Energy Board (NEB) and CTAISB and the Government believes no amendment to the Act is required.

It is recognized that there are areas where there is a need for coordination. A Memorandum of Understanding with the NEB has been signed to assist with this coordination.

* * *

Recommendation 42

- a) The President of the Privy Council should introduce amendments to the *CTAISB Act* defining "extraprovincial motor vehicle occurrence" and giving the TSBC authority to investigate such occurrences.
- b) Concurrently with the passage of the *CTAISB Act* amendment, the TSBC should:
 - i) amend the Regulations to provide for the reporting of extraprovincial motor vehicle occurrences; and
 - ii) begin discussions with other governmental authorities on the coordination, compiling and analyzing of highway occurrence safety data at the national level.

Response:

Agree that an expansion of CTAISB's jurisdiction to include extraprovincial motor vehicle occurrences should be given thorough review given the considerable public interest in highway safety and the climate of federal-provincial cooperation in the areas of highway safety and the transportation of dangerous goods. The review should focus specifically on questions of possible duplication relative to the work already undertaken by provincial authorities. An amendment to include extraprovincial motor vehicle occurrences in CTAISB's jurisdiction may be considered for possible introduction when the Act is opened at a future date.

* * *

Recommendation 43

The TSBC should amend its Regulations to extend the reporting of all pleasure craft occurrences involving death or injury requiring substantial medical treatment or involving substantial property loss or damage. These would be dealt with by the OCSRS in the usual way. The new reporting requirements should be publicized through boating organizations.

Response:

Agree that CTAISB's approach to occurrences involving pleasure craft should be reviewed. CTAISB will look again at the most useful role it can assume in relation to pleasure craft occurrences. Reporting of pleasure craft occurrences will be reviewed in conjunction with initiatives currently underway in the Canadian Coast Guard and elsewhere.

* * *

Recommendation 44

The TSBC should continue its efforts to actively monitor and participate in the development of international conventions and practices for transportation occurrence investigations and extend its efforts to all modes.

Response:

Agree. Being implemented. CTAISB is active with both the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) as these organizations strive to improve air and marine accident investigation procedures and practices. Efforts will be made to extend CTAISB activities in this area to the rail and pipeline modes as well, for example through participation in the International Transportation Safety Association (ITSA).

* * *

Recommendation 45

When an international agreement or convention respecting a transportation occurrence investigation in any mode is anticipated to come into force for Canada, the TSBC should conduct a policy review and implement, pursuant to section 16 of the *CTAISB Act*, any required or desirable changes to the investigation procedures and practices set out in the Regulations before or at the time the international agreement or convention comes into force for Canada. Such changes to investigatory policy should be developed by Board members.

Response:

Agree. Being implemented. For example, CTAISB is participating in current initiatives at the International Maritime Organization (IMO) to develop a new convention or resolution aimed at improving marine accident investigation processes; any necessary changes to CTAISB policies, procedures and practices to comply with any future IMO arrangements will be made following consideration at the CTAISB staff and Board level as appropriate.

* * *

Recommendation 46

The President of the Privy Council should introduce amendments to the *CTAISB Act* to empower the TSBC to administer binational or multinational agreements for the granting of assistance to appropriate foreign authorities for the investigation of transportation occurrences within the TSBC's jurisdiction.

Response:

Agree with intent. As recognized by the Commission, CTAISB already can and in fact does provide assistance to foreign authorities for the investigation of transportation occurrences. No amendment to the Act is required, but an amendment to signal Canada's positive approach in this area will be considered.

* * *

Recommendation 47

The President of the Privy Council should introduce amendments to the *CTAISB Act* to extend the application of the *CTAISB Act* to:

- a) all marine occurrences in the 200-mile Canadian economic zone; and
- b) marine or aviation occurrences in any place over which Canada has assumed responsibility for air traffic control or vessel traffic systems.

Response:

Agree with intent. An amendment to extend the application of the Act will be considered.

It is however, important to recognize that the present Act provides CTAISB with authority to investigate a very wide range of occurrences. As well, under various administrative arrangements in place, for example under the auspices of the International Civil Aviation Organization (ICAO) and potentially with arrangements which may later be put in place following current discussions at the International Maritime Organization (IMO), CTAISB has the opportunity for participation in investigations of aviation and marine occurrences worldwide.

* * *

Recommendation 48

Because the purpose of a TSBC investigation or inquiry is only to determine causes and contributing factors and to make recommendations to enhance safety, the Board should not hesitate to make findings on the bases of relevance to safety and technical reliability. The Board should not be hindered by strict criminal or civil legal standards of proof.

Response:

Agree. The Board concurs and the Recommendation has been implemented.

* * *

Recommendation 49

In making findings as to causes and contributing factors, the Board should ensure that it does not restrict itself to proximate or probable cause. To this end, the Board should revoke its TSB Decision 6.

Response:

The Government agrees. The Board has revoked its TSB Decision 6.

* * *

Recommendation 50

The Board should develop a policy establishing criteria for increased participation by observers in investigations.

Response:

Agree in part. Recommendations 50 through 52 are for increased participation by observers in investigations and the objective envisaged (improved quality and efficiency of investigations) is supported. The benefits of increased participation are recognized and are currently of worldwide interest. They have recently been the subject of much discussion at the International Civil Aviation Organization (ICAO). Policies for increased participation by observers must also take into account the need to ensure objective, conflict-free independent investigations and findings. When the participation of observers with a specific interest in the outcome of an investigation is too great, the credibility and objectivity of the investigation can be damaged. CTAISB is reviewing its policy in consultation with all those interested with respect to this important area, with a view to making any appropriate adjustments within the next six months.

* * *

Recommendation 51

The TSBC should amend its regulations to provide for the flexible application of policy criteria to the extent of participation in investigations by observers.

Response:

Agree. CTAISB will amend its Regulations as required, in consultation with all those interested, once decisions have been taken with respect to the appropriate degree of participation by observers.

* * *

Recommendation 52

The Board members should develop guidelines directed to IICs for a range of types of participation by observers in investigations. These could include:

- a) possible roles for the accredited representatives of foreign governments;
- b) depending on the expertise of the observer, assisting the IIC in one or more aspects of the investigation such as evaluating human factors, analyzing operating procedures or reviewing the operator's management practices; and
- c) conducting tests or simulations under TSBC supervision.

Response:

Agree. Being implemented. Guidelines directed to the Investigators in Charge (IICs) for a range of types of participation by observers in investigations will be developed in consultation with all those interested, to reflect whatever approach to participation of observers is adopted by the Board. Some guidelines, reflecting the present approach, are in place in the CTAISB Regulations and in the CTAISB Manual of Investigation Operations.

* * *

Recommendation 53

The Board should promptly disband the Initial Review Committee and issue an instrument of delegation to TSBC staff to issue draft reports to the Interested Parties.

Response:

Agree with intent. The Board concurs with the objective of producing Reports more quickly and has disbanded the Initial Review Committee. The Board does not envisage delegating to staff the issue of draft Reports, as it believes the draft Reports should reflect the findings made by the Board members following their review, consideration and analysis of investigators' reports, based on the Board members' own judgment and expertise and any other information and analysis they find applicable. Staff already are authorized to issue factual updates on occurrences being investigated.

* * *

Recommendation 54

The Board members should develop by-laws setting out criteria and procedures for holding hearings with IPs when appropriate.

Response:

Agree with intent. Regulations or by-laws will be used to set out appropriate criteria and procedures.

* * *

Recommendation 55

- a) As general principles:
- i) the present *CTAISB Act* provisions granting differing degrees of confidentiality and privilege to various types of information acquired by the TSBC should be consistent; and
 - ii) the present CTAISB provisions granting confidentiality to various types of information, with two exceptions referred to in recommendations 56 and 57, should be replaced with a general rule that information provided to the TSBC is public, but cannot be used against the persons giving such information or their employers in criminal, civil or regulatory proceedings.
- b) The President of the Privy Council should introduce amendments to the *CTAISB Act* and consequential amendments to the *Access to Information Act*:
- i) substituting the privilege provisions and exemptions in section 28, 29 and 30 for a general provision that information, other than physical evidence, obtained by the TSBC shall be used only for the purpose of advancing transportation safety;
 - ii) providing that such information shall not be used by any person or authority for the purpose of determining criminal or civil liability or the entitlement to any right, interest or operator's licence;
 - iii) providing that any report may not be used for any of the purposes referred to in ii) above;
 - iv) providing that any safety advisory, safety information letter, hazard notification or other publication of the TSBC may not be used for any of the purposes referred to in ii) above; and
 - v) permitting the use of such information for prosecutions under section 35 of the *CTAISB Act*.

Response:

Agree in part. Recommendations 55 through 59 provide an interesting and thoughtful approach to the problem of how best to ensure CTAISB obtains all relevant evidence in connection with occurrences so that accurate findings as to causes and contributing factors of occurrences can be made, safety deficiencies can be identified, and safety recommendations can be made and acted upon.

Agree that the CTAISB Act provisions dealing with this problem should be reviewed taking into account the proposals made in Recommendations 55 through 59. The approach proposed by the Commission is innovative and would provide a less complex and confusing arrangement. While currently CTAISB has not experienced significant problems with the privilege sections of the Act, the potential for problems exists. Therefore Recommendations 55 through 59 will be examined with a view to adoption of the most effective legislative provisions in this area when the Act is opened for amendment.

* * *

Recommendation 56

The President of the Privy Council should introduce amendments to section 28 of the *CTAISB Act* and consequential amendments to the *Access to Information Act* to provide that:

- a) the Board, at the conclusion of an investigation, or the Inquiry Officer, in the course of a public inquiry, shall release to the public those parts of an on-board recording which are relevant to the advancement of transportation safety;
- b) the remaining parts of an on-board recording shall be kept confidential by the TSBC and are not compellable as evidence unless their production is ordered by a coroner or court of competent jurisdiction, on notice to the TSBC; and
- c) the coroner court of competent jurisdiction shall not order the disclosure of confidential parts of an on-board recording, and a court shall not permit use in legal proceedings of any part of an on-board recording, unless satisfied, after in camera hearing, that any release of any of the remaining parts is necessary in the interests of justice.

Response

This approach to the handling of on-board recordings will be given full consideration during the review of all sections of the Act related to privileged evidence.

* * *

Recommendation 57

The President of the Privy Council should introduce amendments to the *CTAISB Act* and consequential amendments to the *Access to Information Act*, that the TSBC and participants shall keep information obtained in the course of an investigation confidential from the public until the conclusion of the investigation or until testimony is given at a TSBC public inquiry. The amendment should confirm that the Board or a participant may use such information at any time for the purpose of issuing hazard notifications or correcting safety deficiencies.

Response:

This proposal will be reviewed. It should be noted that the Act already clearly authorizes the Board to make whatever use of information the Board may consider necessary in the interests of transportation safety, including use of information to assist in the correction of safety deficiencies.

* * *

Recommendation 58

The President of the Privy Council should introduce an amendment to the *CTAISB Act* that would:

- a) authorize the Chairperson or his or her delegate to release any type of information obtained by the TSBC at any time under exigent circumstances involving an immediate perceived danger to life or public safety, to any governmental authority of Canada or a province; and
- b) relieve the Chairperson or his or her delegate from any liability for acts taken in good faith under this section.

Response:

These proposals will be reviewed.

- a) CTAISB has in place arrangements to ensure urgent safety information is passed on immediately to anyone, including federal and provincial government departments and agencies and the industry, who is in the position to take required remedial action.
- b) No problems have arisen, but positive legislative protection might be of assistance and will be considered.

* * *

Recommendation 59

The President of the Privy Council should introduce an amendment to the *CTAISB Act* that, where an investigation or public inquiry is being held, the Board or the Inquiry Officer has the authority, on being satisfied that the enhancement of safety would be advanced, to grant immunity to a witness from civil, criminal or regulatory proceedings arising from the occurrence being investigated, except for prosecution of:

- a) offenses prescribed by section 35 of the *CTAISB Act*; and
- b) Criminal Code offenses against the administration of justice.

Response:

The Government feels that it is doubtful that at present Canadian social policy has accepted the concept of this extent of immunity from civil or criminal proceedings in exchange for testimony from individuals. It is worth noting that the current legislation contains certain safeguards against self-incrimination by stating that witness statements cannot be used against their author in criminal or regulatory proceedings. These safeguards are similar to those provided for in the Canadian Charter of Rights and Freedoms and other federal statutes such as the Canada Evidence Act.

* * *

Recommendation 60

The Chairperson should develop a set of guidelines for the exercise of his or her disclosure powers under section 20(6) of the *Access to Information Act*. The purpose of these guidelines should be to assist the Chairperson and the Board to demonstrate that their disclosure of information is consistent with the intention of the *Access to Information Act* and the *CTAISB Act* to enhance public safety. The guidelines should be reviewed periodically.

Response:

Agree. Implemented at CTAISB. CTAISB's general guidelines are that all information is releasable unless prohibited by law or unless its release would damage the conduct of investigations.

* * *

Recommendation 61

The TSBC should increase its efforts to participate in and co-operate with the transportation community by consulting transportation regulators, carriers and private operators.

Response:

Agree. Being implemented at CTAISB where a full program of interaction with the transportation regulators, carriers and private operators is being developed.

* * *

Recommendation 62

The President of the Privy Council should introduce amendments to the *CTAISB Act* that the Board have the power to appoint temporary member(s) on an ad hoc basis for a specific investigation or safety study, as assigned by the Chairperson.

Response:

The Government is actively looking into the benefits of this Recommendation.

* * *

Recommendation 63

The President of the Privy Council should introduce amendments to the *CTAISB Act* to delete the word "exclusive" in section 10(2) to clarify that the Board has overall managerial responsibility.

Response:

Requires further consideration. This Recommendation will be examined with a view to an assignment of roles and responsibilities best suited to the efficient and effective operation of the agency.

* * *

Recommendation 64

The Board members should develop a policy for the role of Board members in representing the TSBC at accident sites.

Response:

Agree. Implemented.

* * *

Recommendation 65

Although the DOIs should continue to have responsibility for conduct of investigations subject to published Board policies, the Board should discuss draft reports directly with staff field investigators and analysts.

Response:

Agree. Implemented.

* * *

Recommendation 66

The President of the Privy Council should introduce amendments to the *CTAISB Act* that the Chairperson, on the recommendation of the Board:

- a) establish qualification criteria and approve the hiring of senior staff; and
- b) determine budgetary allocation.

Response:

Agree with objective of ensuring highly qualified senior staff are available at CTAISB, and agree as well with the objective of ensuring effective budgetary allocation. However these objectives will be pursued in another manner.

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